

IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:)	
)	
TIMOTHY L. DONAHO, JR.)	Supreme Court #SC84742
)	
Respondent.)	

RESPONDENT’S BRIEF

Timothy L. Donaho, Jr. #42881
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Respondent/Pro-Se

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
JURISDICTIONAL STATEMENT.....	3
STATEMENT OF FACTS.....	3
POINTS RELIED UPON.....	3
ARGUMENT.....	4
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	7
CERTIFICATION: SPECIAL RULE 1(C).....	7

TABLE OF AUTHORITIES

Article 5, section 5 of the Missouri Constitution.....	3
<i>In re Forge</i> , 747 S.W.2d 141 (Mo. 1988).....	5
<i>In re Reza</i> , 743 S.W.2d 411 (Mo. 1988).....	5
<i>In re Stabb</i> , 719 S.W.2d 780 (Mo. 1986).....	5
<i>Matter of Smith</i> , 749 S.W.2d 408 (Mo. 1988).....	4
<i>Matter of Striebel</i> , 744 S.W.2d 778 (Mo. 1988).....	4
R.S. Mo. §484.040.....	3
Supreme Court Rule 5.....	3

JURISDICTIONAL STATEMENT

This Court has jurisdiction under Article 5, section 5 of the Missouri Constitution, Supreme Court Rule 5, R.S. Mo. §484.040 and the common law of the State of Missouri.

STATEMENT OF FACTS

Respondent has no dispute with the statement of facts recited in the Office's brief and adopts same herein.

POINTS RELIED ON

WHILE NOT DISAGREEING TO THE IMPOSITION OF DISCIPLINE, THE PROPOSED DISCIPLINE SET FORTH IN THE ADVISORY COMMITTEE'S OPINION IS EXCESSIVE AND EITHER A PUBLIC REPRIMAND OR A SUSPENSION OF NO MORE THAN SIX (6) MONTHS SHOULD BE IMPOSED.

ARGUMENT

AN IMPOSITION OF DISCIPLINE OF EITHER A PUBLIC REPRIMAND OR A SUSPENSION OF NO MORE THAN SIX MONTHS IS WARRANTED AND THE NINE (9) MONTH SUSPENSION IS EXCESSIVE.

Respondent has not, at any point during these proceedings, disagreed with an imposition of some form of discipline in this case. In other cases, similar findings of misconduct has warranted a lesser discipline.

In a case of neglecting a legal matter and allowing a default and garnishment to issue, a suspension of sixty (60) days was is found to be appropriate. *Matter of Striebel*, 744 S.W.2d 778 (Mo. 1988). In the case at bar, while neglect may be found, no adverse impact was imposed upon Campbell. Campbell received a total refund, plus costs and interests, of all sums owed her. In fact, the Office of Chief Disciplinary Counsel has not cited one negative impact upon Campbell either in its brief or at the advisory hearing. Instead, the Office merely engages in conjecture of what or may have happened. Matters of disciplinary proceedings require evidence of misconduct and adverse impact by a preponderance of the evidence. Conjecture is insufficient under this standard. *Matter of Smith*, 749 S.W.2d 408 (Mo. 1988).

A six month suspension was found appropriate in the case of In re Reza, 743 S.W.2d 411 (Mo. 1988). In that case, the respondent/attorney was found to have neglected a legal matter, making misleading statements to the client, failing to cooperate in the investigation and engaging in an unauthorized practice of law.

Another case of note is In re Forge, 747 S.W.2d 141 (Mo. 1988). In that case, an attorney neglected a client matter and failed to timely cooperate with the investigation of the complaint. A six months suspension was ordered in that case. It should be noted that in that case, a mitigating factor that the client did not profit from his misconduct was noted. This was a mitigating factor not considered by the Advisory Committee in its determinations and in its opinion.

Another interesting case of note is In re Stabb, 719 S.W.2d 780 (Mo. 1986). In that case, a lawyer neglected a legal matter and also failed to cooperate with the disciplinary investigation of that attorney. In that case, the lawyer/respondent had, in favor of mitigation, no prior discipline and no personal gain. This Court found that a public reprimand was warranted.

In this case, Respondent does not dispute that misconduct occurred and that some form of discipline is warranted. Respondent advised the Advisory Committee of this fact and agreed to discipline. A nine month

suspension, as illustrated by the cases previously cited, is excessive. More importantly, the Advisory Committee failed to take into consideration the lack of personal gain in this matter. Campbell was repaid all monies owed her with interest and costs. As such, a discipline more in line with the cases cited previously is in order.

CONCLUSION

For all of the above and foregoing reasons, an order of discipline should be either a public reprimand or a suspension of not more than six (6) months.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that two copies of the above and foregoing document was served upon all counsel of record by placing same in a properly addressed envelope, as shown below, and with postage fully prepaid depositing same in an United States Post Office mail box this 30th day of October, 2002:

Sharon K. Weedin
Staff Counsel
3335 American Avenue
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CERTIFICATION: SPECIAL RULE NO. 1(C)

I certify that to the best of my information, knowledge and belief:

1. Includes all information required by Rule 55.03
2. Complies with the limitations In Special Rule No. 1(b);
3. Contains 771 words (excluding this certificate) pursuant to Microsoft Word 2000, the word processing system used
4. That Norton Anti-Virus software was used to scan the disk and that a scan was negative.